

Amendment No. 1 to SB0747

Roberts
Signature of Sponsor

AMEND Senate Bill No. 747

House Bill No. 79*

by deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 4-5-325, is amended by deleting the section and substituting instead the following:

(a)

(1) When a state agency issues a notice to a person, local governmental entity, board, or commission for the violation of a rule or statute and the notice results in a contested case hearing, at the conclusion of the contested case hearing, the hearing officer or administrative law judge may order the state agency to pay to the respondent the reasonable expenses incurred because of the notice, including a reasonable attorney's fee, if the hearing officer or administrative law judge determines that:

(A)

(i) The claims contained in the notice are not warranted by existing law nor by a nonfrivolous argument for the extension or modification of existing law; and

(ii) The claims contained in the notice do not have evidentiary support; or

(B) The state agency issued the notice to harass, cause unnecessary delay, or cause needless expense to the party issued the notice.

(2) Subdivision (a)(1) is not satisfied simply by a state agency failing to prevail against the respondent.

(3) If the hearing officer or administrative law judge orders the state agency to pay the respondent the reasonable expenses incurred, then the hearing officer or administrative law judge shall set forth in a written order the findings of facts and conclusions of law upon which the determinations are based.

(b) If a final decision in a contested case hearing results in a respondent seeking judicial review under § 4-5-322, then the judge conducting the review may, at the conclusion of the hearing, make the same findings and enter the same order as authorized by the hearing officer or administrative law judge pursuant to subsection (a).

(c) For purposes of this section:

(1) "Notice" means a document required by § 4-5-307(b); and

(2) "Respondent" means a party to whom a state agency issues a notice.

SECTION 2. Tennessee Code Annotated, Section 63-1-144, is amended by adding the following as a new subsection:

(c)

(1) In addition to the authority contained in this section, when a party seeks judicial review of a state agency decision under § 4-5-322 or the chancery court decision under § 4-5-323, then the court, or the board, committee, or council if the matter is remanded to the agency, upon finding that a sanction of the license or certificate holder is appropriate, may require the license or certificate holder to pay the actual and reasonable costs incurred by the division or agency for the judicial review, including costs for the time, travel, and lodging of the office of the attorney general, court reporter and transcript costs, and court costs. The order must reflect the maximum amount owed by the license or certificate holder for the judicial review.

(2) A chancery court shall not award costs pursuant to this subsection (c) unless the court determines that:

(A)

(i) The claims asserted in the petition for judicial review are not warranted by existing law nor by a nonfrivolous argument for the extension or modification of existing law; and

(ii) The claims asserted in the petition for judicial review do not have evidentiary support; or

(B) The license or certificate holder petitioned for judicial review to harass, cause unnecessary delay, or cause needless expense to the state or state agency.

SECTION 3. This act takes effect upon becoming a law, the public welfare requiring it.